

SUPERIOR COURT

**CANADA
PROVINCE OF QUÉBEC
DISTRICT OF QUEBEC**

No. 200-06-000132-111

DATE: October 29, 2013

PRESIDING: THE HONOURABLE JEAN-FRANÇOIS ÉMOND, J.S.C. (JE 0144)

ERNST & YOUNG LLP

Petitioner

v.

GUINING LIU

Respondent

-and-

SINO-FOREST CORPORATION

-and-

ALLEN T.Y. CHAN

-and-

W. JUDSON MARTIN

-and-

KAI KIT POON

-and-

DAVID J. HORSLEY

-and-

WILLIAM E. ARDELL

-and-

JAMES P. BOWLAND

-and-

JAMES M.E. HYDE

-and-

EDMUND MAK
-and-
SIMON MURRAY
-and-
PETER WANG
-and-
GARRY J. WEST
-and-
PÖYRY (BEIJING) CONSULTING COMPANY LIMITED

Mis en cause

**ORDER ON THE PETITIONER'S MOTION *DE BENE ESSE* TO STAY THE MOTION
TO AUTHORIZE THE BRINGING OF A CLASS ACTION AND TO OBTAIN THE
STATUS OF REPRESENTATIVE AS AGAINST ERNST & YOUNG**

- [1] **WHEREAS** on June 9, 2011, the Respondent commenced the present class action against Sino-Forest Corporation, certain of Sino's current and former officers and directors, Ernst & Young and Pöyry for damage suffered as a result of purchasing or acquiring Sino securities at an inflated price;
- [2] **WHEREAS** on July 20, 2011, a class action similar in nature to the Québec Class Action was also commenced in Ontario;
- [3] **WHEREAS** on March 30, 2012, Sino's filed an application for protection from its creditors under the *Companies' Creditors Arrangement Act*¹, before the Ontario Superior Court of Justice, and obtained an initial order pursuant to which a stay of proceedings was granted in respect of SFC and certain of its subsidiaries;
- [4] **WHEREAS** on May 8, 2012, the stay was extended to all defendants in the Ontario and Québec class actions, and more notably to the Petitioner, Ernst & Young;
- [5] **WHEREAS** on November 29, 2012, Guining Liu, the Québec Class Action representative plaintiff, and the Ontario Class Action representative plaintiff entered into a settlement agreement with Ernst and Young in order to resolve claims against Sino, its affiliates and subsidiaries, and Ernst & Young;

¹ RSC 1985, c. C-36.

- [6] **WHEREAS** on December 3, 2012, the Plan of Compromise and Arrangement of Sino (the "Plan"), which included the framework to settle and release all claims against Ernst & Young in relation to Sino, (other than Class Action Claims that are founded on Section 5.1(2) D&O Claims, Conspiracy Claims or Non-Released D&O Claims of the *Companies' Creditors Arrangement Act*²), was approved by an overwhelming majority of the creditors voting on the Plan;
- [7] **WHEREAS** on December 10, 2012, the Ontario Superior Court of Justice sanctioned the Plan declaring that the conditions, matters and transactions contemplated therein were fair and reasonable;
- [8] **WHEREAS** on March 20, 2013, the Honourable Justice Morawetz, appointed to sit both as a CCAA judge and a Class proceedings judge, issued an order approving the Ernst & Young Settlement and Release and declaring that such settlement was fair and reasonable in all circumstances and for the purpose of both proceedings;
- [9] **WHEREAS** Ernst & Young will be providing CDN \$117 million to a trust created for the benefit, and with the purpose of being distributed to securities claimants, as provided for by the Ernst & Young Settlement and Release and the Settlement Order;
- [10] **WHEREAS** the Settlement Trust is the only financial contribution currently anticipated for stakeholders to date;
- [11] **WHEREAS** the putative class members of the present action are included in the securities claimants which can participate in the distribution of the Settlement Trust (as defined in the Settlement Order);
- [12] **WHEREAS** the present motion is brought before this Honourable Court on consent of Guining Liu, the Québec Class Action representative plaintiff;
- [13] **WHEREAS** Sections 16 and 17 of the *Companies' Creditors Arrangement Act*;

WHEREFORE THIS COURT:

- [14] **DECLARES** that upon the Ernst & Young Settlement Date (as defined in the Settlement Order rendered by the Superior Court of Ontario in Court File No. CV-12-9667-00CL) the *Motion to authorize the bringing of a Class Action and to Obtain the Status of Representative* filed by the Respondent in the present matter, shall be permanently and forever stayed, estopped and barred as against Ernst & Young LLP pursuant to the Plan of Compromise and Arrangement of Sino-Forest Corporation, and the Sanction Order, subject only to the right of the plaintiffs of the present class action to claim and receive the allocations to which they are entitled pursuant to the Claims and Distribution Protocol (as defined in the Sanction Order);

² Section 7.1 of the Plan.

[15] **WITHOUT COSTS.**



JEAN-FRANÇOIS ÉMOND, J.S.C.

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